IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No.903 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LEGAL HEIR OF SHANTUBEN BHABHLUBHAI DHAKDA

Versus

ANAKBHAI MERAMBHAI

Appearance:

1. Civil Revision Application No. 903 of 2002

MR ASHISH M DAGLI for Applicant Nos.1-1/3

RULE SERVED BY DS for Respondent No. 1

MR PV NANAVATI for Respondent No. 2

MR VIBHUTI NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 23/08/2002

ORAL JUDGEMENT

1. Heard Mr.Ashish Dagli, learned advocate appearing on behalf of the applicant - revisionist and Mr.P.V.Nanavati, learned advocate appearing on behalf of

Respondent No.2 - Insurance Company. Nobody appears on behalf of Respondent No.2, though duly served.

2. In this matter the applicant - revisionist was the original claimant who has filed Motor Accident Claims Petition No.1035 of 2000 before the Motor Accident Claims Tribunal, Amreli for seeking compensation on account of accident occurred on 14.11.2000. In the said accident, wife of the applicant - revisionist expired. The said claim petition was subsequently put before the Lok Adalat and it was amicably settled and compromised between the parties. The applicant has claimed Rs.4 lakh but he was awarded Rs.2,70,000/= by virtue of the aforesaid settlement. The Motor Accident Claims Tribunal passed an order to the effect that out of the settled amount of Rs.2,70,000/= an amount of Rs.2,34,500/= is to be deposited in the Fixed Deposit and remaining amount of Rs.35,500/= is to be paid to the applicant - revisionist in cash.

3. The applicant - revisionist thereafter moved an application before the Motor Accident Claims Tribunal on 28.12.2001 for withdrawal of an amount of Rs.45,000/= from the aforesaid fixed deposit receipt. The said application was rejected on 29.12.2001 by the Motor Accident Claims Tribunal. The applicant - revisionist thereafter filed a Special Civil Application No.2012 of 2002 before this Court seeking mandatory relief for withdrawal of the aforesaid amount from the fixed deposit receipt. However, this Court has not entertained the said special civil application and while disposing off it, directions were given to the Motor Accident Claims Tribunal to permit the applicant to lead necessary evidence and after considering the same as well as recording the reasons appropriate decision may be taken.

4. The applicant thereafter moved an application on 27.05.2002 before the Motor Accident Claims Tribunal for seeking permission to withdraw an amount of Rs.54,000/= on the ground that his mother was bedridden and an operation was to be performed. However, without considering the said ground taken in the application dated 27.05.2002, the Motor Accident Claims Tribunal has rejected the said application on the ground that in view of the latest pronouncements 40% of the amount of the share of claimant No.1, namely, Bhabhlubhai Nankabhai Dhakhda was given to him in cash by A/c Payee Cheque and his 60% share was deposited in F.D.R. in his name. In this view of the matter, the order passed earlier was just and proper and did not call for any interference by the Claims Tribunal subsequently.

5. Mr.Dagli, learned advocate appearing on behalf of the applicant - revisionist submitted that the claim was finally settled in Lok Adalat and no further proceeding is pending against the award made in the Lok Adalat, since the applicant's wife expired in the accident and sufficient amount was paid on her treatment. Thereafter the applicant - revisionist moved an application for withdrawal of an amount of Rs.54,000/- as his mother was bedridden and an operation was to be performed and for that purpose an amount of Rs.54,000/- is required to be withdrawn. The Tribunal has not considered this aspect at all while disposing off applicant's application dated 27.05.2002.

Mr.Dagali also invited attention to the certificate issued by Dr.N.J.Nirmal of Madhavan Surgical Hospital and Prasuti Gruh, Amreli on 06.06.2002 wherein the expenses for the operation was estimated between Rs.30,000 to 35,000/=.

6. After having heard the respective parties and after having considered the documents which have been produced on record, I am of the view that the interest of justice would be served if the applicant - revisionist is permitted to withdraw an amount of Rs.35,000/= (Rupees Thirty five thousand only) from his share of the deposit which is lying with Junagadh Amreli Gramin Bank. The Tribunal is, therefore, directed to encash the said F.D.R. and allow the applicant - revisionist to withdraw an amount of Rs.35,000/= (Rupees Thirty five thousand only) and the Tribunal is further directed to reinvest the balance amount of Rs.19,000/= (Rupees Nineteen thousand only) in the Fixed Deposit for a further period of five years. It is further clarified that the applicant - revisionist will be entitled to withdraw the interest which is to be accrued on this fresh deposit of Rs.19,000/= (Rupees Nineteen thousand only).

7. With the aforesaid directions, this civil revision application is partly allowed. Rule is made absolute to the above extent. There shall be no order as to costs. Direct service permitted.

Sd/-

(K.A.Puj, J)

'Bhavesh'